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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/710,811	08/04/2004	David J. Lovell	00124-01075-US	4810

23416 7590 06/14/2007
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EXAMINER	
COONEY, JOHN M	

ART UNIT	PAPER NUMBER
1711	

MAIL DATE	DELIVERY MODE
06/14/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/710,811	LOVELL ET AL.	
	Examiner	Art Unit	
	John m. Cooney	1711	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *16 March 2007*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-21* is/are pending in the application.

4a) Of the above claim(s) *10-13 and 15-19* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-9,14,20 and 21* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *04 August 2004* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

Applicant's arguments filed 3-16-07 have been fully considered but they are not persuasive.

Newly submitted amended claims 10 and 11, as now amended, are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: Claims are now directed towards a process for making a thermoformed laminate which would either be a part of non-elected group II. or its own independent group of invention.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 10 and 11 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 2 and 14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Applicants' claims are confusing as to intent because it can not be determined what criteria the claimed IFD and compression set values are based.

Applicants' arguments have been considered. However, rejection is maintained for the reasons set forth above. The basis for determining the compression values is not definitively set forth on the record. The establishment on the record of what the similar test for determining compression values of the instant concern is insufficient in establishing definiteness under 35 USC 112 2nd paragraph.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-9, 14, 20, and 21 are rejected under 35 U.S.C. 102(b) as being anticipated by Blackwell et al.(5,804,113).

Blackwell et al. discloses preparations of polyurethane foams materials having densities as claimed prepared by mixing and reacting polyols meeting those as claimed by applicants, isocyanates including TDI and MDI in amounts as required by applicants' claims, water as a blowing agent, catalysts, surfactants, fire retardants, and other additives under controlled and reduced pressures as claimed by applicants and wherein

the reactive mixtures are placed against barrier films during formation (see column 4 line 3 – column 7 line 28, and the examples, as well as, the entire document). The specific film materials of applicants' claims, though not particularly identified, are readily envisaged by Blackwell et al.'s disclosure of films for their foam forming materials to be applied to.

Applicants' arguments have been considered. However, rejection is maintained for the reasons set forth above. The language of applicants' claims identifying the materials formed as being sound insulative laminates does not distinguish the processes and products as defined by the claims from the products and processes disclosed by Blackwell et al. in the patentable sense. Additionally, the barrier layers of applicants' claims are not distinguished in structure or form from the bottom paper or films disclosed by Blackwell et al. Applicants' arguments pertaining specifically to claims 10 and 11 are inapplicable as these claims are now withdrawn as being directed towards non-elected subject matter. As to claim 21, the adhesive as defined by this claim without particular definition is sufficiently met by the implicit adhesive properties possessed by the foam material.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims1-9, 14, 20, and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Niederoest et al.(6,372,812).

Niederoest et al. discloses preparations of polyurethane foams materials prepared by mixing and reacting on a conveyor belt polyols meeting those as claimed by applicants, isocyanates including TDI and MDI in amounts as required by applicants' claims, water as a blowing agent, catalysts, surfactants, fire retardants, and other additives under controlled and reduced pressures as claimed by applicants and wherein the reactive mixtures are placed against barrier films during formation (see the entire document, as well as, the comparative examples).

Niederoest et al. differs from applicants' claims in that densities meeting those of applicants' claims are not required. However, Niederoest et al. discloses control of these values and the blowing agent amounts dictating these values for the purpose of providing acceptably formed articles, and a prima facie case of obviousness has been held to exist where the proportions of a reference are close enough to those of the claims to lead to an expectation of similar properties. *Titanium Metals v Banner* 227 USPQ 773. **(see also MPEP 2144.05 I)**. Accordingly, given that the upper value for

applicants' claims are so close to the lower value of Niederoest et al., it is held that it would have been obvious for one having ordinary skill in the art to have operated at or close to the disclosed density values in the operations of Niederoest et al. for the purpose of achieving acceptable results in order to arrive at the products and processes of applicants' claims with the expectation of success in the absence of a showing of new or unexpected results.

Applicants' arguments have been considered. However, rejection is maintained for the reasons set forth above. The language of applicants' claims identifying the materials formed as being sound insulative laminates does not distinguish the processes and products as defined by the claims from the products and processes disclosed by Niederoest et al. in the patentable sense. Additionally, the barrier layers of applicants' claims are not distinguished in structure or form from the conveyor material disclosed by Niederoest et al. Applicants' arguments pertaining specifically to claims 10 and 11 are inapplicable as these claims are now withdrawn as being directed towards non-elected subject matter. Additionally, applicants' claims do not require that the products be thermoformed or that thermoforming operations be performed. Rather, applicants' claims are directed towards thermoformable/pre-thermoformed articles and methods for making the same. As to claim 21, the adhesive as defined by this claim without particular definition is sufficiently met by the implicit adhesive properties possessed by the foam material.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to John Cooney whose telephone number is 571-272-1070. The examiner can normally be reached on M-F from 9 to 6.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Seidleck, can be reached on 571-272-1078. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JOHN M. COONEY, JR.
PRIMARY EXAMINER
Group 1700